

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES ALLEN WALLACE,

Plaintiff,

v.

SARAH COOPER and THOMAS ROSS,

Defendants.

ORDER

13-cv-507-bbc

Judgment was entered in this case on January 7, 2014 after I dismissed plaintiff James Allen Wallace's complaint for failure to state a claim upon which relief may be granted. Plaintiff then filed a motion to alter or amend the judgment, which I denied on March 20, 2014 because he failed to show how the January 7 ruling was incorrect. Now plaintiff has filed a notice of appeal. Because plaintiff has not paid the \$505 fee for filing an appeal, I construe his notice as a request for leave to proceed in forma pauperis on appeal.

A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence, the appeal is taken in bad faith or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. In

Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith in cases in which a plaintiff is appealing the same claims the court found to be without legal merit. Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000).

Plaintiff is trying to appeal the same claims on which I denied him leave to proceed, but he has not shown any legally meritorious basis for his appeal. Therefore, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$505 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. Plaintiff must include with his motion an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If he does not file a motion requesting review of this order, the court of appeals may choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the full \$505 filing fee before it considers his appeal further. If he does not pay the fees within the deadline set, it is possible that the court of appeals will dismiss the appeal.

One additional matter deserves mention. Plaintiff has asked the court to appoint counsel to represent him on appeal. Because proceedings before this court have concluded,

this court lacks authority to appoint counsel for plaintiff on appeal. Plaintiff should direct his request to the Court of Appeals for the Seventh Circuit.

ORDER

IT IS ORDERED that

1. Plaintiff James Allen Wallace's request for leave to proceed in forma pauperis on appeal, dkt. #31, is DENIED. I certify that plaintiff's appeal is not taken in good faith.
2. Plaintiff's motion for the court's assistance in recruiting him counsel for his appeal, dkt. #31, is DENIED.
3. The clerk of court is directed to insure that plaintiff's obligation to pay the \$505 fee for filing his appeal is reflected in the court's financial records.

Entered this 5th day of May, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge